

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

BENJAMIN OROZCO,
Plaintiff

v.

CRAIG PLACKIS
Defendant

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CIVIL ACTION NO. 1:11-cv-703-LY

Jury Demanded

PLAINTIFF'S MOTION IN LIMINE

TO THE HONORABLE JUDGE OF THE COURT:

Plaintiffs respectfully requests that Defendants and their counsel be instructed that they are not to mention any of the subjects described below in the presence of the jury or the jury panel, and that Defendants and defense counsel be further instructed to instruct their witnesses not to mention any of the subjects described below in the presence of the jury or the jury panel, unless counsel for Defendants first establishes the admissibility of such information outside the presence of the jury or the jury panel and obtain a ruling from this Court permitting them to address the matter.

The matters on which Plaintiffs request an order *in limine* are as follows:

1. Any evidence or information related to specific instances of conduct of the Plaintiff and/or of the Plaintiff's witnesses, other than conduct specifically at issue in this case. Any such information is not admissible on the ground that it is not relevant under Federal Rule of Evidence 402. In addition, the probative value of such information is substantially outweighed by the danger of unfair prejudice, confusion, or misleading the jury and should therefore be excluded under Federal Rule of Evidence 403. Further, such evidence is inadmissible character evidence. Federal Rule of Evidence 404(b) and 608(b).

2. Any evidence or information related to arrests, criminal charges or convictions of any of the Plaintiffs or the Plaintiffs' witnesses. Federal Rule of Evidence 609 strictly controls this evidence. Furthermore, the probative value of any such evidence, if any, is substantially outweighed by the prejudicial effect of any such evidence. Federal Rule of Evidence 609(b); 403.

3. Any statement or suggestion to the effect that Plaintiffs are seeking to recover their attorneys' fees and costs, or that any finding for Plaintiffs or award of damages to them would entitle them to recover attorneys' and/or costs from the Defendants. The only issues for jury determination in this case are those involving liability and damages. The Plaintiffs shall submit to the Court a motion for an award of attorneys' fees under 29 U.S.C. §216(b) pursuant to Federal Rule of Civil Procedure 54(d) and Local Rule CV-7(i) in the event they obtain a judgment against the Defendants. Therefore, any evidence or information relating to a potential award of attorneys' fees to the Plaintiffs would be irrelevant to the outcome of that part of the case the jury is to decide. Therefore, this Court should exclude any such evidence under Federal Rule of Evidence 402. Furthermore, the issue of potential attorneys' fees and costs to be awarded to Plaintiffs, should they prevail, have no bearing on liability and/or damages in this case and, therefore, the probative value of such information is substantially outweighed by the danger of misleading and confusing the jury. Therefore, any such information should be excluded under Federal Rule of Evidence 403.

4. Any reference or comments concerning and/or relating to any offer of settlement which either party has made or entered into with other parties, or any reference to the fact that the parties were unable to settle, compromise, or resolve this dispute, that are offered to prove liability and/or that Plaintiffs' case lacks merit. F.R.E. 402, 403, or 408.

5. Any reference or comments concerning the absence of any other party in this lawsuit or any suggestion that another party should be liable for the plaintiff's claims. F. R.E. 402, 403.

6. Any statement or suggestion that this motion has been filed, and that there has been any ruling by the Court in response to this motion. F. R.E. 103(c); 402, 403.

Respectfully submitted,



Aaron Johnson
Texas Bar No. 24056961
EQUAL JUSTICE CENTER and
TRANSNATIONAL WORKER
RIGHTS CLINIC
510 S. Congress Avenue, Suite 206
Austin, Texas 78704
Tel. (512) 474-0007 ext. 104
Fax (512) 474-0008
aaron@equaljusticecenter.org
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on this 13th day of July, 2012, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants below:

Guillermo Ochoa-Cronfel
THE CRONFEL FIRM
2700 Bee Cave Road, Ste. 103
Austin, Texas 78746
Tel. (512) 347-9600
Fax. (512) 347-9911
gjocronfel@gmail.com
COUNSEL FOR DEFENDANT



Aaron Johnson